IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTY FIRST DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 15220 of 2004

Between:

M/s Odeon Theatre, situate at RTC Cross Roads, Chikkadapalli, Hyderabad a partnership firm, rep. by its Managing Partner Smt. Ameena Khatoon w/o Zulfi Ravdjee, aged 50 yrs R/o H.No. 8-2-494/501, Road No.10, Banjara Hills, Hyderabad.

..... PETITIONER

AND

1 The Commissioner of Commercial Taxes, Nampally, Hyderabad.
2 The Appellate Deputy Commissioner (CT), Secunderabad Division, Hyderabad.
3 The Deputy Commercial Tax Officer, Vidyanagar Circle, Hyderabad.
4 The Entertainment Tax Officer, Vidyanagar Circle, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate writ,order or direction, preferably a writ in the nature of Certiorari calling for the records relating to Distraint Order dt. 7-7-2004 passed by the 3rd respondent under Sec. 8 of A.P. Revenue Recovery Act, 1864, as well as demand notice in Form No.4 dt,. 6-8-2004 and to quash the same as being illegal, arbitrary and violative of Article 14 of the Constitution of India and consequently suspend the said Distraint Order.

Counsel for the Petitioner:MR.P.VENUGOPAL.

Counsel for the Respondents : SPL GP FOR TAXES

The Court at admission stage, made the following :

ORDER : (per Sri Bilal Nazki, J)

Heard learned Counsel for the parties. With their consent, the Writ Petition is disposed of at this stage.

Admittedly the petitioner has paid an amount of Rupees Sixty three lakhs by way of liability as Entertainment Tax. The dispute is with regard to the interest as payment has been "late payment". Therefore the petitioner has approached the appellate authority against the order of levying of interest. Pending appeal, he filed a stay application, which has been rejected.

We feel in a case in which the petitioner has already deposited an amount of tax to the tune of Rupees Sixty three lakhs and has filed an appeal against levy of interest, which only amounts to about Rupees Ten lakhs, stay should have been granted by the authority, may be on some conditions.

In the interest of justice, we therefore set aside the consequent distraint order, stay the recovery of liability till disposal of the appeal, subject to deposit of 25% of the liability by the petitioner within a period of six weeks. For six weeks, there shall be an unconditional stay and the stay shall continue till disposal of the appeal, provided the amount is deposited within six weeks. The deposit of amount shall be without prejudice to the rights of the petitioner in the appeal.

Writ Petition is disposed of accordingly. No costs.

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(BILAL NAZKI, J)

31st August, 2004.

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ajr (S.ANANDA REDDY, J)

To

1 The Commissioner of Commercial Taxes, Nampally, Hyderabad.
2 The Appellate Deputy Commissioner (CT), Secunderabad Division,

Hyderabad.
3 The Deputy Commercial Tax Officer, Vidyanagar Circle, Hyderabad.
4 The Entertainment Tax Officer, Vidyanagar Circle, Hyderabad.

5 Two C.Cs. to the special GP for Taxes, High Court buildings,

Hyderabad (O.U.T)

6 Two C.D. copies.